IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.828 OF 2003.

Najir Kadar Mujawar : Appellant

versus

The State of Maharashtra : Respondent.

Mr.Vishwanath S. Talkute for the appellant

Mr.P.S.Hingorani, APP, for the State.

CORAM : D.G.DESHPANDE &

V.M.KANADE, JJ.

DATED : 16th December 2005.

JUDGMENT [PER D.G.DESHPANDE,J]

1. Heard advocate for the accused and learned APP for the State. This appeal is filed by original accused No.4 only challenging his conviction under Section 302 of the Indian Penal Code. There were three more accused i.e. Accused Nos. 1, 2 and 3. But they were acquitted of the offence under Section 302.

2. The prosecution case was [the prosecution stated here is with reference to all the four accused] that accused No.3 was the wife of accused No.1 and Accused No.2 is the wife of accused No.4 i.e. the present accused. Victim was deceased Mahibub Mujawar. P.W.3 Gulab was the son and P.W.6 Smt.Bismilla was the wife of deceased Mahibub. They were residing in the village Gasavi Vasti, Khamgaon, Taluka Phaltan District Satara. They had their agricultural land adjacent to each other. On 23.8.2002 Deceased Mahibub spread Uria in his field and gave well water to the crop. On 24.8.2002 deceased Mahibub found that his field was over flow due to water which was coming from the field of accused and it was causing damage to his crop. He, therefore, started electric motor on the well so that water can go to the field of accused No.1. On the same day at about 8.00 a.m., accused No.3, came to the house of deceased Mahibub and questioned him as to why the water from the well was allowed to enter their field. Deceased Mahibub replied that it was tit for tat. At that time other accused came there and gave him abuses. Accused No.1 alleged to have given a

blow of chappel or sandal on the face of Mahibub as result of which he sustained some injuries.

3. Thereafter while deceased Mahibub, along with P.W.3 and 6, was proceeding to lodge a complaint at police out post and when they came near the house of accused, accused Nos.1, 2 and 3 prevented and restrained them. Hence they changed their direction. In the mean time, accused No.4 came there on bicycle. Accused No.2 informed accused No.4 that deceased Mahibub had beaten old man and hence accused No.4 lifted a bamboo, that was lying there, and gave certain blows as a result of which Mahibub fell down. Thereafter he was removed to different hospitals i.e. Rural Hospital, Phaltan, then Civil Hospital, Satara. P.W.3 Gulab went to Sakharwaid Police Out Post and lodged a complaint vide Exhibit 18. Mahibub was died on way while he was taking to Pune for treatment. Post mortem was conducted; investigation was carried out and the accused came to be prosecuted. Three accused were acquitted by the trial court and this accused No.4 was convicted under Section 302 of the Indian Penal Code. Hence this appeal.

4. Counsel for the accused contended that looking to the background of rivalry between the parties and dispute that has arisen and also looking to the fact that the present accused had come to the spot accidently, he was told that old man was beaten by deceased Mahibub and, therefore, he lifted the bamboo and assaulted the deceased. In the post mortem only four injuries are noted. Two are abrasions and two are contusion over parietal regions. He also contended that deceased Mahibub was alive for quite some time and even if the prosecution case is accepted as it is, it could not be said that this accused had nay intention to kill, nor any knowledge that assault by bamboo i.e. two blows by bamboo on head would result in causing death. Our attention was drawn to the panchanama of seizure of Bamboo. It was 2 inch in diameter. He also contended that there was no premeditation nor any plan nor any design. The assault was sudden without any thought and, therefore, in any case, the accused could not be convicted under Section 302 of the Indian Penal Code and, at the

most his conviction could be under section 325 of the IPC.

5. The learned APP could not successfully met with this submissions made by the learned counsel for the accused. He tried to contend that the offence could be under Section 304 Part I or Part II.

6. Memorandum Exhibit 22/1 is about discovery of bamboo at the instance of this accused No.4. It is described as bamboo with 9 ft. girth (diameter 2 inch), it is split on one side into two and on the other side there is crevice. It is referred to as Kalkacha bamboo which generally means that it is not a solid bamboo.

7. The incident occurred on footpath or foot-way. That foot way was east-west and to the southern side of that foot way there was a garbage dumping place. Therefore lying of bamboo there was most natural.

8. Counsel for the accused contended that

the offence would come under Section 325 of the Indian Penal Code at the most and he prayed for lenient view in the matter regarding the sentence looking to the age of the accused. He also contended that the accused would be ready to give compensation to the victim i.e. the dependents of deceased Mahibub and his statement could be accepted by the court in that regard.

9. Using of bamboo in the background in which accident had occurred clearly show that there was no intention on the part of the accused to cause death nor any knowledge that the assault by bamboo would result in causing death. Ordinarily the bamboo with 2 inch diameter cannot be said to be a deadly weapon. It is also on record that accused No.3 told this accused No.4 that old man was beaten and, therefore, accused No.4 got angry and he lifted the bamboo lying there itself and gave blows. It is clear from the entire evidence that the accused No.4 had not come there with proposed plan to launch assault, he had come there on bicycle. Obviously he was not knowing why and for what quarrel was in between the parties and therefore suddenly in impulse he lifted the bamboo and assaulted the

deceased. Therefore this case cannot come under section 302 nor it can come under section 304 Part I and Part II.

10. Section 325 of the Indian Penal Code is for voluntarily causing grievous hurt. Admittedly, the injury caused was grievous hurt because it has resulted in depressed fracture of sculp. But looking to the circumstances, in our opinion, punishment of three years would meet the ends of justice.

11. So far as fine is concerned, there is no limit imposed in the section about quantum of fine. The substantive sentence can be up to seven years and fine. In our opinion Rs.50,000/- [Rupees Fifty Thousand only] would be proper. It will be apportionment compensation from out of the amount of fine of Rs.51,000/-. In the result, we pass the following order :-

:ORDER:

Appeal is partly allowed.

Conviction of the accused/appellant under Section 302 of the Indian Penal Code is set aside and is altered to Section 325 of the Indian Penal Code. He is sentenced to suffer R.I. for three years and pay compensation of Rs.51,000/- [Rupees Fifty One Thousand only] out of which Rs.50,000/- [Rupees Fifty Thousand only] will be paid to the Legal heirs and representatives of the deceased by the trial Court.

Fine to be deposited before the trial court within eight weeks from today. In default of payment of fine amount, the accused/appellant will undergo R.I. for six months.

Appeal is disposed of accordingly.

[D.G.DESHPANDE,J]

[V.M.KANADE,J]